

# DEP



# CITIZENS' BULLETIN

## The Brecciaroli case

State Supreme Court decision supports wetlands regulation

One of the most controversial legal issues relating to Connecticut's tidal and inland wetlands laws has been the argument that wetlands regulation violates constitutional guarantees against the "taking of private property for public use without just compensation."

In an important decision that has been awaited since passage of the wetland laws, the Connecticut Supreme Court ruled that denial of a specific use of a wetland does not violate this constitutional concept.

The ruling, which was made on April 15, concerned the denial of an application by Dante J. Brecciaroli to place fill on 5.3 acres of tidal wetlands on the East River in Guilford. Mr. Brecciaroli had received local approval for an industrial development on a site which included the state-regulated wetlands. His application for a wetlands permit was denied after a hearing in March of 1972.

Edward Daly, chief of DEP's Tidal Wetlands Preservation Program, said the application was denied on the grounds that 5.3 acres of wetlands would be destroyed, that the fill would decrease the capacity of the Guilford-Madison marsh complex to absorb flood waters, and that the applicant had failed to submit a hydrologic study that considered the possibility that the placement of fill could worsen flooding on adjacent property.

Brian O'Neill, the assistant attorney general who presented the state's case before the court, explained that the appeal was significant in that it was "a case of first impression," meaning that "it was the first time the supreme court has had to wrestle with these particular issues." The court's ruling has therefore "established a precedent that will be binding to all lower courts. Even if a lower court judge disagrees, he will have to abide by the supreme court's ruling."

DEP Commissioner Joseph N. Gill called the court's action "an historic decision which culminates several years of effort beginning with the establishment of the tidal wetlands preservation program." Commissioner Gill implemented the program on October 1, 1969.

In the Brecciaroli decision, the court quoted the Tidal Wetlands Act saying that it is "the public policy of this state to preserve the wetlands and to prevent

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## CANCELLATION NOTICE

As part of an effort to reduce state expenditures for publications, the Department of Finance and Control has directed all agencies to discontinue publication of newsletters except those required expressly by statute, or carrying a subscription fee, or lists, schedules, etc. vital to the proper operation of the agency.

The Citizens' Bulletin is therefore discontinued with this issue.

The Bulletin was conceived to fill a special role - that of providing citi-

zens with the information they needed to participate effectively in environmental discussions and activities. We very much hope that it has at least partially fulfilled that role for you, and urge you to continue your participation and concern.

The department is currently exploring possible methods of continuing the Citizens' Bulletin including a subscription system. If we do resume publication, you will be notified.

...Editor

the despoliation and destruction thereof."

"That declaration of policy," the court continued, "which has not been challenged by the plaintiff, finds extensive support in recent case law and commentary both with respect to the importance of wetlands as natural resources and with respect to their imminent demise at the hands of man."

The decision acknowledged that the privileges enjoyed by private property owners must be limited "where uncontrolled use would be harmful to the public interest," and that police power to this purpose "will not necessarily be deemed a 'taking' in the constitutional sense."

"There can be no question that the plaintiff's wetland would have greater value to him if it were filled," the court said. However, the public interest was determined to be an overriding issue: "The financial effect on a particular owner must be balanced against the health, safety and welfare of the community."

Mr. Brecciaroli appealed to the Court of Common Pleas, arguing that "denial of

his application was improper and arbitrary that it was not supported by the evidence presented at the hearing; that it was an unreasonable exercise of the police power; and that it amounted to an unconstitutional taking of the plaintiff's land without compensation." His motion to introduce evidence on the taking issue was denied, and the court ruled in favor of the state. For those reasons, Mr. Brecciaroli appealed to the Supreme Court.

The key argument presented by the state, with which the court agreed, was that "the denial of the application merely prohibited one specific use which presumably was not reasonable when balanced against the public harm it would create. The plaintiff may still be permitted on subsequent application to fill a lesser portion of his wetland...he may make application for a permit or permits to conduct other regulated activities on the wetland; and he may make any reasonable unregulated use of his land consistent with the laws of the state and the zoning regulations of the town of Guilford. 'Until it appears that the plaintiff has been finally deprived...of the reasonable and proper use of the property, it cannot be said that there has been an unconstitutional taking of the property without just compensation.'"

## 1975 fishing season opens

### 300 streams stocked by state

Thousands of fishermen tried their luck on Connecticut's lakes, ponds and streams April 19 as the 1975 fishing season opened, and according to DEP's statistics, the fishing was better this year than it has been in the past.

Cole Wilde, Chief of the Department's Fish and Water Life Unit, said that DEP employees "checked more than 14,000 anglers with better than 12,000 trout." In past years, the opening day catch averaged between .7 and .75 fish per angler. This year's average was up to .88 fish per angler.

"One fish over seven pounds was taken in the Five Mile River near Danielson, and one weighing over six pounds was caught in the Riverton area of the west branch of the Farmington River," Mr. Wilde said. There were many reports of 18- to 22-inch trout caught in various parts of the state.

"Roughly 40 full-time conservation officers were in the field on opening day," according to Fred Pogmore, head of the Law Enforcement Unit. The COs received assistance from about 15 specialists who carry out enforcement

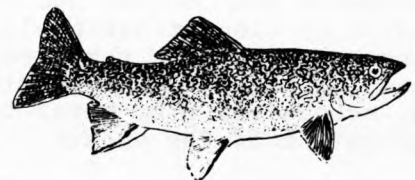
duties as a secondary responsibility.

The law enforcement officers had plenty to do: "There was a large increase in the number of arrests and warnings issued, primarily for exceeding the creel limit and fishing without a license," Mr. Pogmore said. The bag limit of six for bass and two for northern pike, and one for Atlantic Salmon (see box).

"The total number of violations reported by the conservation officers has increased



BROWN TROUT

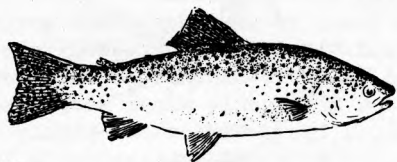


BROOK TROUT

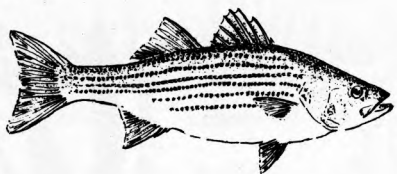
500 percent in the last five years," Mr. Pogmore added. These violations encompass all areas under the COs' jurisdiction, including hunting, fishing, and boating.



Portions of 300 streams and about 70 lakes and ponds are stocked by the state. Approximately 60 percent of the 650,000 brook, brown, and rainbow trout to be stocked this year were released before



RAINBOW TROUT



STRIPED BASS

opening day. The remaining portion is released between April 19 and June 1.

The trout, which were raised at the three state fish hatcheries at Kensington, Burlington, and the Quinebaug Valley

Hatchery in Central Village, range in size from six to 12 inches, with a few as long as 20 inches.

The stocking program has increased in recent years at about the same rate as the number of licensed fishermen in the state. Mr. Wilde said the hatcheries are working "close to capacity" to produce fish for Connecticut's 200,000 sport fishermen.

Although most fishermen on opening day were seeking trout, blackback flounder were being taken along the coast, and striped bass were beginning to appear in Long Island Sound and the Thames River.

Fishermen should watch local newspapers for the weekly "fishing advisories" prepared by DEP. The advisories summarize the best fishing areas of the previous week for both inland and marine fishing.

Fishing licenses and copies of hunting and fishing regulations may be obtained from town clerks' offices throughout the state.

## Reward offered for return of adult salmon

The Connecticut River Anadromous Fisheries Restoration Program is again offering rewards for the return of adult Atlantic Salmon taken in the Connecticut River or its tributaries.

Theodore B. Bampton, Deputy Commissioner of DEP, said "rewards of \$500 for the first live adult Atlantic Salmon, \$100 each for the next 19 live adult fish, and \$25 each for the first 40 adult salmon which cannot be kept alive are being offered to anglers who turn in their catch to representatives of the Department."

The reward program was initiated a year ago in order to assist the fishery agencies in Connecticut, Massachusetts, Vermont, and New Hampshire in their joint effort to restore the Atlantic Salmon to the Connecticut River. The Connecticut River basin states, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service have been involved in a cooperative program to restore shad and salmon to the river since 1967.

Some juvenile salmon stocked this year are still in the river system. Although some of these fish are tagged, the reward offered for a salmon tag return will not be paid for a juvenile. Juveniles are less

than 15 inches in length; adults are over 20 inches long.

"Anglers should release any juvenile salmon they catch, unharmed if possible," Mr. Bampton said. "The juveniles are difficult to rear and are therefore expensive, and the success of the program depends on these small salmon being allowed to leave the river."

Fishermen who have caught adult Atlantic Salmon will be required to provide an affidavit attesting to the time and place of the capture and that the rewards would be paid upon satisfactory verification of the capture by a DEP staff member.

The capture of an adult salmon by a sport fisherman is unlikely due to the small numbers expected. It would also be difficult for a sport fisherman to keep the fish alive; however, the rewards available to anyone turning in such a fish should provide enough incentive to try.

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# INLAND WETLANDS

## 3-year success story continues

Three years after passage of the Connecticut Inland Wetlands Act, awareness of the value of the state's marshes, swamps, bogs, and flood plains continues to increase. Recent activities in several areas attest to this fact:

-In state and local government, regulation of inland wetlands has been implemented. All but 36 towns have established their own wetlands agencies, with the remaining municipalities under state regulation.

-In the courts, a landmark decision was made on a tidal wetlands case that will have a major effect on all wetlands regulation (see page 1).

-And at the Capitol, a proposal to give local inland wetlands agencies the power to issue "cease and desist" orders cleared committee and is awaiting a vote by the legislature.\*

## Wetlands guide published

The Connecticut Inland Wetlands Project has published a handbook on the "Evaluation of Inland Wetlands and Water-course Functions" to assist local inland wetlands agencies in carrying out their functions.

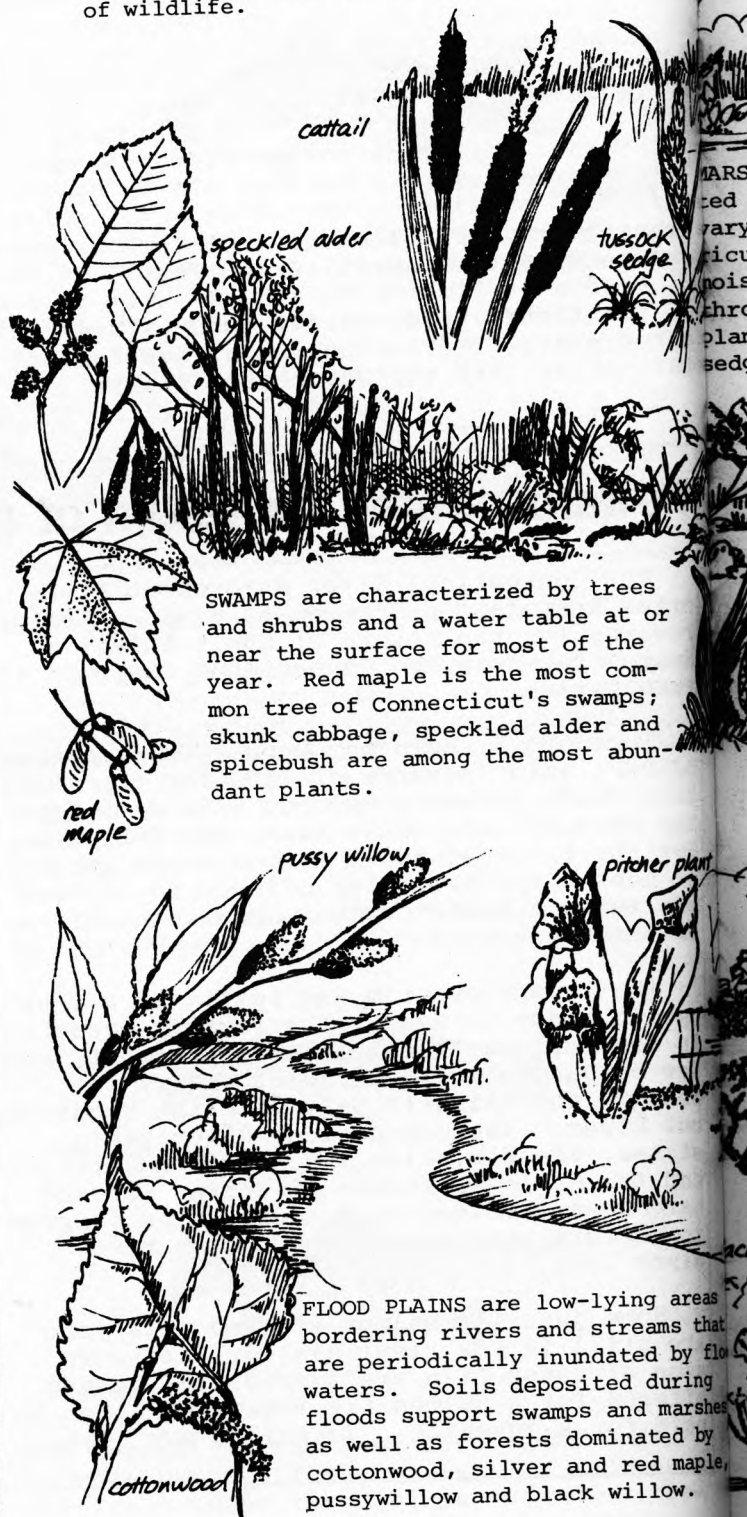
The publication is the culmination of two years of work by the Inland Wetlands Project, a private organization formed to aid municipalities in implementing wetlands regulation under the state's 1972 Inland Wetlands Act.

David Lavine, who served as director of the Project, feels that the handbook "will provide very substantial aid to the towns," and will be of "increasing value in coming years." In addition to describing various characteristics and functions of inland wetlands, the publication gives specific advice on wetlands mapping, interpretation of soils maps (upon which wetlands maps are based), and review of applications for wetlands permits.

Part I of the guide describes physical functions of wetlands such as their role in "water quantity and quality," flooding, and control of erosion and sedimentation.

\*Issuance of a cease and desist order enables an agency to halt an action which threatens to result in "imminent and substantial" environmental damage until a permanent regulatory decision can be made.

Inland wetlands serve many important ecological functions. Flood and erosion damage is reduced by the ability of wetlands to store and slow the speed of flood waters. Wetlands remove pollutants from water flowing through them by trapping sediments and by biologically breaking down impurities. Their role in the water cycle is varied: flood waters are released slowly into streams; in some areas, ground water is discharged into wetlands creating a valuable water supply source. Biologically, wetlands are highly productive, providing food and habitat for a large variety of wildlife.



SWAMPS are characterized by trees and shrubs and a water table at or near the surface for most of the year. Red maple is the most common tree of Connecticut's swamps; skunk cabbage, speckled alder and spicebush are among the most abundant plants.

FLOOD PLAINS are low-lying areas bordering rivers and streams that are periodically inundated by flood waters. Soils deposited during floods support swamps and marshes as well as forests dominated by cottonwood, silver and red maple, pussywillow and black willow.



The biological, recreational, and scenic value of inland wetlands is also discussed.

Part II presents "methods of inventory and evaluation of inland wetlands and watercourses," and Part III deals with the review of applications by local inland wetland agencies.

Each section of the guide contains a bibliography, with indications given as to the value and technical nature of the references. The handbook also includes a glossary of technical terms.

"Although the prime audience for the guide is local inland wetlands agencies," Lavine said, "we have also received orders from planning and zoning boards, attorneys and real estate people interested in submitting applications."

The Inland Wetlands Project has also published a 65-page "Administrative Handbook for Inland Wetlands Agencies."

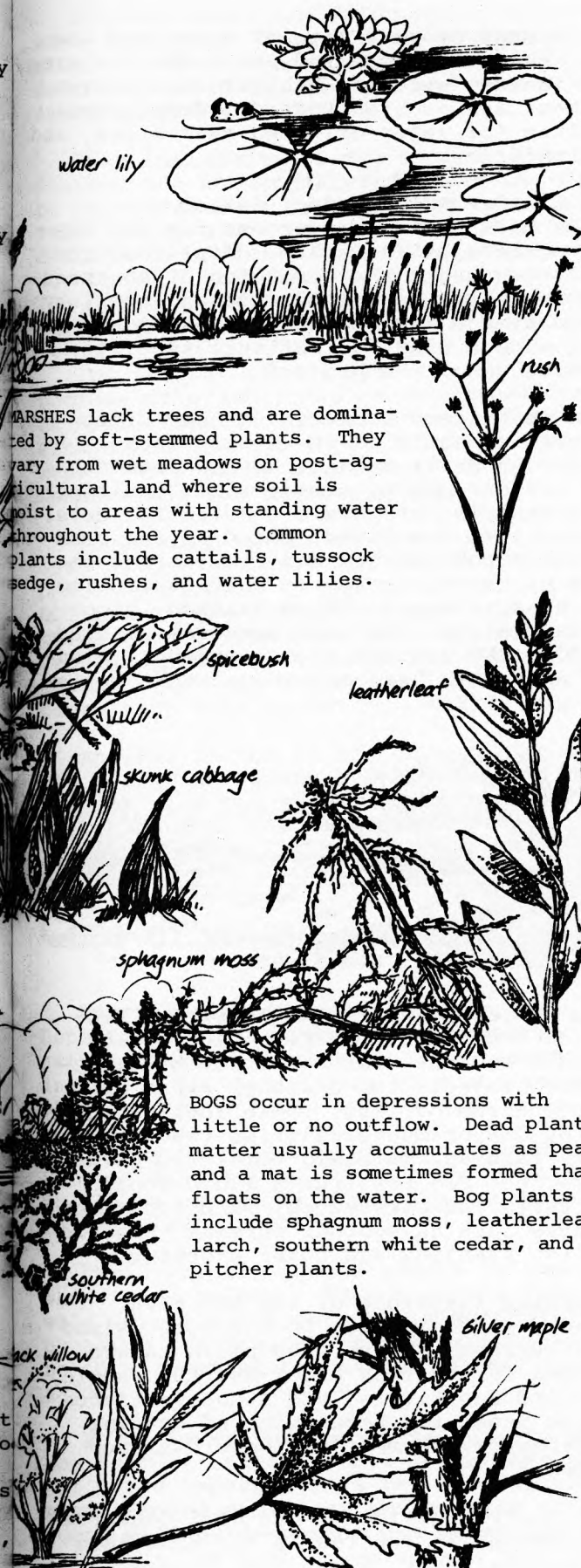
With the publication of "Evaluation of Inland Wetlands and Water Course Functions" the Inland Wetlands Project completed its work under a two-year grant from the Ford Foundation. Looking back on those two years, Lavine is "very pleased about the Project. We had a very productive two years; I feel we got a great deal done."

"As far as the Wetlands Act is concerned, I think the towns have responded very well. Of course there's a teething period of a couple of years...there's also an awful lot of information to assimilate."

Although the Inland Wetlands Project was initially intended to provide assistance to towns in the mid-state region, the organization ultimately dealt with over half of Connecticut's 169 towns. 133 towns have established Inland Wetlands Agencies under the Act, with the remainder being regulated by the State through the Department of Environmental Protection.

Lavine is convinced that the active role of the localities in wetlands regulation "is a very positive thing." He acknowledges, however, that problems occasionally arise: "Since these are citizen's groups, there has been a lot of movement of people on and off the boards. It takes a while to acquire the necessary expertise. A lot of the towns are just now really getting involved."

The wetlands evaluation guide is available for \$4.50 from the Connecticut Inland Wetlands Project, P. O. Box 124, Middletown, Connecticut 06457.



# The Soil Conservation Service completes 4 decades of work

The U.S. Department of Agriculture's Soil Conservation Service (SCS) completed 40 years of service to private citizens and governmental groups in April.

For most of those 40 years, the SCS has been active in Connecticut, with projects such as the compilation of soils maps, technical assistance to landowners and towns, and studies of flood plains and river basins.

The SCS technical staff, with headquarters at Storrs, provides manpower to assist the eight Soil and Water Conservation districts, which are organized along the state's county lines. Each Conservation District has a board of supervisors which determines the needs and problems of the area, and receives staff assistance from the SCS and other agencies.

The SCS has several ongoing programs in Connecticut:

The soils mapping effort, part of the National Cooperative Soils Survey, has been completed for most of the state, with published maps available for Hartford, Litchfield and Tolland Counties. Preliminary (unpublished) maps have been completed for most other areas; these maps are available for inspection at the SCS office and at DEP's Natural Resources Center. Soils information is important in the identification of wetlands and flood-prone areas, and can be used to determine the suitability of certain areas for uses such as buildings, septic systems, sanitary landfills, and highways.

Assistance to landowners began many years ago with aid to farmers in construction of farm ponds, erosion control measures, and development of farm plans. In recent years, the SCS has extended its service to developers, school districts, and private individuals in the form of advice on management of wildlife and timber stands, erosion control and interpretation of soil types and their suitability for various uses.

The SCS has assisted units of government in areas such as preparation of streambelt inventories and interpretation of soil and water resource information. The Hartford County Soil and Water Conservation District has agreed to assist the planning and zoning commissions in 10 towns to review subdivision plans for potential problems such as erosion and wetlands encroachment.

In Eastern Connecticut, the SCS has participated in a Resource Conservation and

Development project with 57 towns and the DEP. Activities carried out under the project include wildlife habitat improvement, sediment and erosion control, development of sites for water-oriented recreation, and reforestation.

A similar RC&D project called the King's Mark has been approved for the western portion of the state. Nine resource committees under the direction of an executive committee have conducted an inventory of the King's Mark area's resources and are developing a plan to institute specific measures under the project.

In the Eastern Connecticut RC&D area, and more recently in the King's Mark region, an Environmental Review Team has made evaluations of residential, municipal and industrial proposals. Potential development sites are investigated by the team for the opportunities and limitations imposed by natural resource characteristics such as soil types, flood hazards, slope and vegetation. Several agencies, including SCS, DEP and the area's regional planning agencies, have participated in review team activities.



The SCS administers the Watershed Protection and Flood Prevention Act, which provides federal assistance for multiple-purpose projects for drainage areas of 250,000 acres or less. With local sponsorship by DEP or municipalities (who agree to obtain land and maintain completed structures), the SCS constructs flood control structures and carries out land treatment measures such as contour farming, pasture and tree planting and cover cropping.

Planning functions of the SCS have included participation in the Long Island Sound Regional Study, floodplain hazard analyses for Wharton Brook and the Yantic, Still and Hop Rivers, and flood insurance studies under the Department of Housing and Urban Development's Flood Insurance Program.

The central office of the Soil Conservation Service is located in the Mansfield Professional Park, Route 44A, Storrs, Connecticut 06268.



# Peregrine falcons to be reintroduced

Bird watchers and outdoorsmen in Connecticut and other Atlantic coast states should be on the lookout for the peregrine falcon, one of the fastest and rarest of American birds.

Once indigenous to the eastern United States, the now-endangered peregrine will be reintroduced to several eastern states this spring under an experimental program devised by Cornell University scientists and the U.S. Fish and Wildlife Service. The Cornell ornithologists have successfully bred peregrine falcons in captivity.

The falcon, also called the duck hawk because it often preys on waterfowl, nests in North America only in Canada, interior Alaska and the continental United States west of the Rocky Mountains. Sightings in Connecticut are extremely rare.

Increasing levels of pesticides in the 1960's, particularly DDT and its derivative, DDE, contributed to the bird's decline. DDT and other "persistent pesticides," which remain poisonous long after their release into the environment, have also lowered the Connecticut population of ospreys or fish hawks.

Another factor in the endangering of the peregrine falcon has been man's intrusion upon the bird's habitat and disturbance of its breeding areas.



Under the experimental program, peregrines bred in captivity at Cornell by Dr. Tom Cade and his associates will be released in upstate New York and in the Chesapeake Bay area of Maryland. If additional young are available, further releases will be made at natural cliffs in New England.

In order to ease the birds' transition from a captive to a wild state, the falcons will be placed in groups of four to six in protective enclosures. As soon as they are capable of sustained flight, they will be permitted to fly free. They will be able to return to the site of the enclosure until they can feed themselves through their own hunting efforts.

Adult peregrines are from 15 to 20 inches long and have a 43-inch wingspan. The birds are distinguished by their hooked beaks, sharp claws, long pointed wings and narrow tail.

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## Care of young animals is a job for other animals—not people

Every spring and early summer, the Department of Environmental Protection and nature centers throughout the state receive inquiries about the care of young animals that have been found in the wild.

Dennis DeCarli, Chief of the Wildlife Unit at DEP, advises Connecticut residents to "leave young, wild animals where they belong—in the wild."

"Wild animals should remain in the wilds where they belong. When a person takes a wild animal for a pet, he is not only breaking the law, but may kill the animal he is attempting to befriend," Mr. DeCarli said.

Molly Savage of the Massachusetts Audubon Society's Animal Care Center agrees: "Of prime importance is the warning that one never should undertake the rearing of a young wild bird—unless one knows for certain that its true parents have been killed or otherwise eliminated."

Ms. Savage's advice applies to young mammals as well as birds. Frequently, young animals that appear to have been abandoned are not alone at all. "Most likely, their parents are hidden nearby to see that the inexperienced youngsters come to no harm," Mr. DeCarli said. "If you should notice a baby animal alone in the woods, watch it as you pass and withdraw to a safe distance and observe it longer if you wish, but do not endanger it by handling it, lingering near it, or by moving it."

In addition, young animals are extremely difficult to care for. "Young birds must be fed from dawn to dusk at fifteen to twenty minute intervals," Ms. Savage said, adding that a young bird "requires the 'example' that its bird parents provide of how birds live."

"Without this conditioning which parents provide, the young bird fails to learn the image of its natural food, fails to learn to search for food, and may indeed

respond to humans more readily than to other birds. If released in such condition, it has little chance of surviving in the wild."

"If one finds a nest that has fallen and young birds are alive in it," Ms. Savage advises, "one should attempt to replace the nest in its original location. If the nest is damaged beyond function, a substitute nest may be constructed by lining a small box with grass and tying it in the tree. Punch small holes in the bottom so that rain will drain. Its about the most that you can do, successfully."

Persons desiring more information on the care of young birds should write to the Wildlife Unit of DEP or to Bird Care, Massachusetts Audubon, Lincoln, Mass. 01773.

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## **Audubon opens Hartford office**

The Connecticut Audubon Society has opened a Hartford office which is available for use by environmental groups throughout the state. The Hartford Environmental Services Center, as it is called, will serve as an information coordinator for environmental organizations.

Desk space and use of services such as a reference library, conference facilities, photo copier, and typewriters will be available under various fee plans.

The Center is in Suite 11, 60 Washington Street, Hartford 06106; telephone 527-8737.

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Fish drawings by Ruth Billard

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## **Announcing...**

The illustration on pages 4 and 5 is from the "Developers' Handbook" which the department plans to publish this summer. The Handbook will illustrate methods of subdivision planning and construction that minimize environmental impact, and will provide a guide to DEP permits and application procedures. Individuals or organizations interested in receiving the Handbook may write or call DEP's Office of Planning and Research, State Office Building, Room 163, Hartford, CT 06115.

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## **Land use conference planned**

A one-day conference on "Comprehensive Land-Use Planning: The Law and Its Administration" will be held Wednesday, May 21 at DiLoreto Hall, Central Connecticut State College in New Britain. Registration will be at 8:30, followed by a welcome and keynote speech at 9:30. The keynote speaker will be Robert Reese Professor of Law, State University of New York, Albany, N.Y.

Four seminars will be run concurrently from 10:30 - 12:30 and will be repeated from 2 - 4:00 so that each conference registrant can attend two sessions.

The seminar topics will be Land Preservation, Resources and Development, Transportation, and Land Use Decision-making. The speakers will include representatives from state and federal agencies, regional planning agencies, law firms, environmental groups, and industry.

The conference is sponsored by the Connecticut Council on Environmental and Energy Education in cooperation with the Institute of Public Service, University of Connecticut.

The fee of \$6 includes coffee and lunch. Pre-registration is required. For further information call Dr. Leon Gorski, Professor, Biology, Department, Central Connecticut State College, New Britain at 225-7481.

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